

III. Remarks

Claims 1-75 are pending in the current application. Applicants are grateful to the Examiner for recognizing the allowable subject matter in Claims 5-12, 14-16, 19-24, 39-42, 44, 46, 47 and 75. Reconsideration and withdrawal of the rejection of the remaining claims are respectfully requested in view of the foregoing amendments and following arguments.

A. Summary of Amendments

The following claims have been amended to correct apparent formalistic errors.

Claim 13 has been amended to recite “said environment” rather than “environment”.

Claim 25 has been amended to recite “employees” rather than “teachers” consistent with Claim 17 from which it depends.

Claim 33 has been amended to correct “or” to “of”.

B. Rejection under 35 U.S.C. §102(e)

The Action rejects Claims 1-4, 13, 17-18, 25-29, 31-38, 43, 45, 48-52 and 70-74 as being anticipated by U.S. Published Patent Application No. 2002/0046265 to Orton et al. Applicants have submitted a Rule 131 Declaration executed by each of the inventors showing that the invention claimed in these claims was reduced to practice before the September 5, 2001 effective filing date of the Orton et al. reference. Therefore, it is submitted that the Orton et al. reference is not prior art to these claims. Reconsideration and withdrawal of this rejection are respectfully requested in view of the Rule 131 Declaration.

C. Rejection under 35 U.S.C. §101

The Action rejects Claim 53-69 as being directed to nonstatutory subject matter. In doing so, the Examiner has cited to MPEP 2106 IV.B.I(c) for support that a signal is per se nonstatutory subject matter. It is submitted that the Examiner has misconstrued this section.

This section states that a claim that recites merely the “physical characteristic” of a form of energy (e.g., the strength of a magnetic field) is per se nonstatutory subject matter. However, a signal claim directed to the practical application of electromagnetic energy is statutory subject matter regardless of its transitory nature.

Taking for example Claim 53, Claim 53 is directed to “a data signal embodied in a carrier wave encoded with computer program code for causing a processor to assist in the development of an environment.” The claim then recites three code segments “for causing the processor” to perform certain recited steps. Claim 53 is not directed merely to a physical characteristic of the signal (e.g., it has no reference to, for example, a frequency, intensity, etc.), but rather is directed to a practical application, i.e., the signal includes code for causing a processor to perform certain steps.

It is submitted that the Patent Office has recognized that the form in which the signal of Claim 53 is recited recites statutory subject matter.

For example, please see U.S. Patent No. 6,615,195, which includes the following claim:

22. A computer data signal embodied in a carrier wave encoded with computer program code for causing a processor to value a knowledge-based property comprising:

means for causing the processor to analyze data representing accesses by users to a medium containing a copy of the knowledge-based property;

means for causing the processor to estimate a pattern of the accesses by users to the medium containing the copy of the knowledge-based property using a statistical model; and

means for causing the processor to value the knowledge-based property based on the pattern, wherein the knowledge-based property is assigned a worth.

Another example can be found in U.S. Patent No. 6,789,108, which includes the following claim:

31. A computer data signal embodied in a carrier wave encoded with computer program code for causing a processor to disseminate information comprising:

a first code segment for sending an electronic mail message to at least one recipient, said electronic mail being linked to a graphical presentation file;

a second code segment for sensing the capabilities of the at least one recipient's computer with the electronic mail message; and,

a third code segment for supplying based on the sensed capabilities only elements of the graphical presentation file which may be viewed on the at least one recipient's computer.

From the foregoing, it is submitted that Claims 53-69 recite statutory subject matter. Reconsideration and withdrawal of the rejection of these claims are respectfully requested.

IV. Conclusion

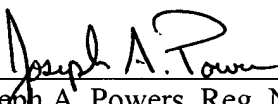
In view of the foregoing remarks, amendments, and the accompanying Rule 131 Declaration, Applicants submit that this application is in condition for allowance at an early date, which action is earnestly solicited.

If the Examiner should find that the foregoing does not place the application in condition for allowance, the Examiner is invited to call the undersigned to discuss the details thereof before issuing a substantive action.

The Commissioner for Patents is hereby authorized to charge any additional fees or credit any excess payment that may be associated with this communication to deposit account **04-1679**.

Respectfully submitted,

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